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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/724,445	11/26/2003	Jorge R. Serrano	C0034	1197

21495 7590 06/16/2005  
CORNING CABLE SYSTEMS LLC  
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EXAMINER

MAYO, TARA L

ART UNIT PAPER NUMBER

3671

DATE MAILED: 06/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/724,445

Applicant(s)

SERRANO ET AL.

Examiner

Tara L. Mayo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 March 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-14, 29 and 31-45 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-14 and 38-45 is/are allowed.
- 6) ☒ Claim(s) 29 and 32-36 is/are rejected.
- 7) ☒ Claim(s) 31 and 37 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 November 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Drawings***

#### **INFORMATION ON HOW TO EFFECT DRAWING CHANGES**

##### **Replacement Drawing Sheets**

Drawing changes must be made by presenting replacement sheets which incorporate the desired changes and which comply with 37 CFR 1.84. An explanation of the changes made must be presented either in the drawing amendments section, or remarks, section of the amendment paper. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). A replacement sheet must include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of the amended drawing(s) must not be labeled as "amended." If the changes to the drawing figure(s) are not accepted by the examiner, applicant will be notified of any required corrective action in the next Office action. No further drawing submission will be required, unless applicant is notified.

Identifying indicia, if provided, should include the title of the invention, inventor's name, and application number, or docket number (if any) if an application number has not been assigned to the application. If this information is provided, it must be placed on the front of each sheet and within the top margin.

##### **Annotated Drawing Sheets**

A marked-up copy of any amended drawing figure, including annotations indicating the changes made, may be submitted or required by the examiner. The annotated drawing sheet(s) must be clearly labeled as "Annotated Sheet" and must be presented in the amendment or remarks section that explains the change(s) to the drawings.

##### **Timing of Corrections**

Applicant is required to submit acceptable corrected drawings within the time period set in the Office action. See 37 CFR 1.85(a). Failure to take corrective action within the set period will result in ABANDONMENT of the application.

If corrected drawings are required in a Notice of Allowability (PTOL-37), the new drawings MUST be filed within the THREE MONTH shortened statutory period set for reply in the "Notice of Allowability." Extensions of time may NOT be obtained under the provisions of 37 CFR 1.136 for filing the corrected drawings after the mailing of a Notice of Allowability.

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1. The drawings were received on 28 March 2005. These drawings are not acceptable because they do not include replacement sheets.

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the “armor layer” as set forth in claims 17 through 19 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled “Replacement Sheet” in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Objections***

3. The prior objections to the claims have been overcome by the response filed 28 March 2005.

***Claim Rejections - 35 USC § 112***

4. The prior rejections of the claims under 35 USC §112, first paragraph have been overcome by the response filed 28 March 2005.

***Claim Rejections - 35 USC § 102***

5. The prior rejection of claims 15 and 23 under 35 USC §102 has been overcome by the response filed 28 March 2005.

***Claim Rejections - 35 USC § 103***

6. The prior rejections of claims 17 through 20, 22, 24 and 25 under 35 USC §103 have been overcome by the response filed 28 March 2005.
7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later

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invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

8. Claims 29 and 32 through 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Searby (U.S. Patent Publication No. 2005/0074293 A1).

Searby '293 disclose a method for placing a duct in a surface comprising the steps of:  
with regard to claim 29,

forming a channel of predetermined width in the surface; and

placing the duct into the channel, thereby forming a friction fit between the duct and the channel over a portion of the length of the cut, wherein the duct has a diameter greater than the predetermined width of the channel (paragraph 0033); and

with regard to claim 32,

further comprising the step of placing a filling material into the channel that overlies the duct, thereby at least partially filling the channel and covering the duct (paragraph 0029).

Searby '293 fails to teach:

the surface being a paved surface;

routing at least one fiber optic cable within the duct;

the duct comprising an inner tube and a jacket, the jacket being formed of a compressible, heat-resistant material; and

the duct being of non-round cross section.

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With regard to claim 29, the method disclosed by Searby '293 is capable of being performed on a paved surface. Therefore, it would have been obvious to one having ordinary skill in the art of cable laying at the time of invention to modify the method disclosed by Searby '293 such that it would have been performed on a paved surface instead of turf. The motivation would have been to minimize scarring of the paved surface.

With regard to claim 29, it is a well known expedient to form ducts of inner tubes and jackets.

With regard to claim 33, because routing fiber optic cables through ducts is a well known expedient in the art, it would have been obvious for one having ordinary skill in the art at the time of invention to modify the method disclosed by Searby '293 such that it would further include the step. The motivation would have been to establish a path for communication lines in the underground duct as desired.

With regard to claim 34, it would have been obvious to one having ordinary skill in the art at the time of invention to make the jacket a foamed material to provide for compression during installation in the channel.

With regard to claim 35, it would have been obvious to one having ordinary skill in the art at the time of invention to make the jacket from a heat resistant material to protect the lines carried by the duct from damage caused by increased temperature.

With regard to claim 36, it would have been obvious to one having ordinary skill in the art at the of invention to make the duct of non-round cross section to provide for enhanced anchoring in the channel.

***Allowable Subject Matter***

9. Claims 1 through 14 and 38 through 45 are allowed.
10. As allowable subject matter has been indicated, applicant's reply must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 CFR 1.111(b) and MPEP § 707.07(a).

***Double Patenting***

11. The potential double patenting rejection of claim 24 is obviated in view of the response filed 28 March 2005.

***Conclusion***

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tara L. Mayo whose telephone number is 571-272-6992. The examiner can normally be reached on Monday through Friday 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on 571-272-6998. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

 tlm

12 June 2005

  
ROBERT E. PEZZUTO  
PRIMARY EXAMINER